

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MARC LAMOUREUX AND SUSAN  
KIMBROUGH,

Plaintiff,

v.

OCWEN LOAN SERVICING, LLC, AND  
EQUIFAX INFORMATION SERVICES,  
LLC.

Defendants.

No. 2:17-CV-01423-RAJ

JOINT STATUS REPORT AND  
DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 16 and 26(f), and the Court's Orders on Initial Discovery, (Dkt # 13), Plaintiffs and Defendants (collectively the "Parties") submit the following Joint Status Report and Discovery Plan.

**1. A statement of the nature and complexity of the case.**

Plaintiffs allege that Defendants violated the Fair Credit Reporting Act, 15 U.S.C. § 1692 *et seq.* ("FCRA"), the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), the Washington State Consumer Protection Act, RCW 19.86 *et seq.* ("WCPA"), the Washington State Collections Agency Act, RCW 19.16 *et seq.* ("WCAA"), and the Washington State Consumer Loan Act, RCW 31.04 *et seq.* ("WCLA").

The Plaintiff alleges that Ocwen Loan Servicing, LLC and Equifax Information Services, LLC provided the Plaintiffs with inconsistent, misleading and confusing documentation and

1 information regarding amounts allegedly owed on their former residential mortgage loan. Credit  
2 reporting and erroneous debt collection continued for mortgage loans associated with their  
3 former residence, 1 Old Farm Road, Bedford, N.H. (hereafter, the "Former Residence") despite  
4 efforts to dispute the erroneous collection and credit reporting with Defendants.  
5

6 Plaintiffs allege that they suffered damages, including emotional distress as a result of the  
7 relentless pursuit by Ocwen for a debt that was cancelled more than six years ago. Plaintiffs have  
8 suffered anger, sadness, and helplessness during the years that they tried to clear their names with  
9 Ocwen and Equifax. The Plaintiffs allege that the actions of Defendants have proximately caused  
10 Plaintiffs' loss of time, loss of money, including attorney fees and costs spent to inquire and  
11 correct the problems created by the Defendants. Additionally, Plaintiffs allege that they have  
12 suffered compensatory damages, actual damages, treble damages and attorney's fees and costs  
13 as well as injunctive relief.  
14

15 Defendants:

16 Ocwen: Ocwen states that it complied with the FCRA, FDCPA, WCPA, WCAA, and  
17 WCLA in its servicing of Plaintiffs' loan. Ocwen denies that it caused Plaintiffs to suffer any  
18 damages or is otherwise liable to Plaintiffs.  
19

20 Equifax: Equifax is a consumer reporting agency as that term is defined by the FCRA.  
21 Equifax states that it complied with the FCRA in its handling of Plaintiff's credit file, including  
22 its responses to Plaintiff's disputes. Equifax denies that it caused Plaintiff to suffer any damages  
23 or is otherwise liable to Plaintiff.  
24  
25

1 The Parties agree that this case is not complex.

2 **2. A proposed deadline for the joining of additional parties.**

3 The deadline for joining additional Parties should be 30 days following the filing of this  
4 Joint Status Report.

5 **3. Whether the parties consent to assignment of this case to a full time United**  
6 **States Magistrate Judge, pursuant to 28 U.S.C. §636(c) and Local Rule MJR**  
7 **13 to conduct all proceedings.**

8 No.

9 **4. A discovery plan that states, by corresponding paragraph letters, the parties'**  
10 **views and proposals on all items in Fed. R. Civ. P. 26(f)(3), which includes**  
11 **the following topics:**

12 **a. Initial disclosures.**

13 The Parties are to exchange initial discovery on or before November 30, 2017, as required  
14 by the Court's Order on initial discovery. (Dkt # 13).

15 **b. Subjects, timing, and potential phasing of discovery.**

16 The Parties intend to use the standard tools of discovery, which includes Interrogatories,  
17 Requests for Production, Requests for Admission, depositions, and potentially stipulations and/or  
18 subpoenas where documents need to be obtained from non-parties. At this time, the Parties do  
19 not believe there should be phasing of discovery. For the subjects of discovery, see the response  
20 to Section 5(e), below.

21 **c. Electronically stored information.**

22 The parties do not believe that this case is suitable for electronic discovery, but are  
23 amenable to producing any electronically stored information in hard copy as an initial matter.  
24 Once the parties have had the opportunity to review such documents, the parties agree to confer  
25 regarding any additional exchange or production that the parties believe is necessary, and if an

1 Agreement is warranted, to use the Western District of Washington's Model ESI Agreement with  
 2 as few revisions to the Model as practicable.

3 **d. Privilege issues.**

4 The parties intend to cooperate to resolve any issues related to privileged information,  
 5 and use the Model Stipulated Protective order with as few revisions to the Model as practicable.  
 6 The parties agree that communications made after the attorney had been retained in this matter  
 7 do not need to be stated on any privilege log. The parties agree that inadvertent production of  
 8 privileged materials shall not constitute a waiver of privileges or protections so long as the  
 9 producing party notifies the receiving party promptly upon discovery of the inadvertent  
 10 production.

11 **e. Proposed limitations on discovery.**

12 All discovery should be limited as provided for in the Federal Rules of Civil Procedure  
 13 and Local Rules. The Parties do not currently seek additional limitations on discovery, but may  
 14 seek limitations should the need arise.

15 **f. The need for any discovery related orders.**

16 The Parties intend to work together to resolve all discovery issues, however, it is  
 17 foreseeable that the Defendants may potentially need to seek additional discovery orders related  
 18 to the scope and types of discovery permitted, depending upon the types of discovery sought by  
 19 the Parties. The parties intend to cooperate to resolve any issues related to privileged  
 20 information, and use the Model Stipulated Protective order with as few revisions to the Model as  
 21 practicable.

22 **5. The parties' views, proposals, and agreements, by corresponding paragraph**  
 23 **letters, on all items set forth in Local Civil Rule 26(f)(1):**

24 **a. Prompt case resolution.**

1 Parties intend to file dispositive motions on all or part of the claims, allegations, and/or  
 2 affirmative defenses in an effort to shorten or simplify the case. The parties currently have no  
 3 additional, specific suggestions for shortening or simplifying the case.

4 **b. Alternative dispute resolution.**

5 The parties are agreeable to private mediation after the exchange of basic information in  
 6 discovery and prior to the filing of dispositive motions.

7 **c. Related cases.**

8 There are currently no related cases.

9 **d. Discovery management.**

10 Discovery should be managed as provided for in the Federal Rules of Civil Procedure and  
 11 Local Rules. The Parties do not currently seek additional management on discovery issues.

12 **e. Anticipated discovery sought.**

13 The parties anticipate discovery depositions of the parties and discovery pursuant to Civil  
 14 Rule 33, 34 and 36. There also may be a need for some discovery from non-parties.

15 Plaintiff currently intends to conduct discovery on the following topics:

- 16 1. Discovery regarding Ocwen's collection of mortgage loan debts after  
 17 foreclosure
- 18 2. Discovery regarding Ocwen's collection of mortgage loan debts after charge-off.
- 19 3. Discovery regarding Ocwen's collection of mortgage loan debts after debt  
 20 cancellation
- 21 4. Discovery regarding Ocwen's collection of mortgage loan debts after transfer  
 22 from Litton.

1           5.       Discovery regarding Ocwen's issuance of IRS form 1099-C debt cancellation  
2 for mortgage loan debts.

3           6.       Discovery regarding Ocwen's handling and process of disputes from consumers  
4 regarding the collection of mortgage loan debts.

5           7.       Discovery regarding Ocwen's reporting of cancelled and charged-off debts to  
6 credit bureaus and handling and review of credit disputes from credit bureaus.

7           8.       Discovery related to Ocwen's issuance of erroneous IRS form 1099-C's for debt  
8 cancellation.

9           9.       Discovery related to the issuance of Ocwen's debt collection letters and debt  
10 communications.

11          10.       Discovery related to Ocwen's mailing of written monthly statements claiming that  
12 Ocwen has been servicing mortgage loans after the debt has already been cancelled.

13          11.       Discovery related to the issuance of Equifax's reasonable procedures regarding  
14 the preparation of credit reports and credit files it publishes and maintains concerning the  
15 Plaintiffs.

16          12.       Discovery related to the review of the credit disputes Equifax received from the  
17 Plaintiffs.

18          13.       Discovery related to the communication of the amount of debt, date of charge-off  
19 and the current status of debts that Equifax reported regarding the debts disputed by the Plaintiffs.  
20

21               Defendants currently intends to conduct discovery on the following topics:

22          1.       Equifax anticipates seeking discovery on all issues raised in Plaintiff's complaint  
23 including Plaintiff's alleged damages.  
24  
25

1           2.       Ocwen anticipates seeking discovery on all of the issues raised in Plaintiffs'  
2 complaint, including but not limited to the Plaintiffs' alleged damages.

3           The Parties may add topics of discovery as additional information is learned in the  
4 discovery process.

5                   **f.       Phasing motions.**

6           The Parties do not believe that phasing motions is desirable.

7                   **g.       Preservation of discoverable information.**

8                   **h.       The parties agree to take all reasonable measures to preserve**  
9 **discoverable information and privilege issues.**

10          See response to Section 4(d) above.

11                  **i.       Model Protocol for Discovery of ESI.**

12          The parties do not believe that this case is suitable for electronic discovery, but are  
13 amenable to producing any electronically stored information in hard copy as an initial matter.  
14 Once the parties have had the opportunity to review such documents, the parties agree, if  
15 necessary, to confer regarding any additional exchange or production that the parties believe is  
16 necessary. The parties may agree to use the Model Protocol, with as limited revisions as  
17 necessary, should discovery of ESI be agreed upon by the parties or ordered by the Court.

18                  **j.       Alternatives to Model Protocol.**

19          No suggestions at this time.

20                  **6.       The date by which discovery can be completed.**

21          The Parties believe that discovery can be completed by 100 days prior to trial, except that  
22 depositions of the experts may take place up to 60 days before trial.

23  
24                  **7.       Whether the case should be bifurcated by trying the liability issues before the**  
25 **damages issues, or bifurcated in any other way.**

Pursuant to Fed. R. Civ. P. 42(b), the parties request the Court bifurcate the liability phase of the trial from the punitive damage phase of the trial (if necessary). Bifurcation of trial into separate phases to consider, first, liability and compensatory damages, and second, punitive damages, can avoid the potential that evidence pertinent to punitive damages will improperly prejudice a determination on liability and compensatory damages.

**8. Whether the pretrial statements and pretrial order called for by Local Civil Rules 16(e), (h), (i), and (k), and 16.1 should be dispensed with in whole or in part for the sake of economy.**

The parties agree that they will comply with, and not dispense with, pretrial statements and the pretrial order.

**9. Whether the parties intend to utilize the Individualized Trial Program set forth in Local Civil Rule 39.2 or any ADR options set forth in Local Civil Rule 39.1.**

The Parties do not intend to use the Individualized Trial Program set forth in Local Civil Rule 39.2. The preferred ADR option is to use a private mediator.

**10. Any other suggestions for shortening or simplifying the case.**

Parties intend to file dispositive motions on all or part of the claims, allegations, and/or affirmative defenses in an effort to shorten or simplify the case. The parties currently have no additional, specific suggestions for shortening or simplifying the case.

**11. The date the case will be ready for trial.**

The Parties believe that they can be prepared for trial in one year after entry of a Scheduling Order.

**12. Whether the trial will be jury or non-jury.**

Plaintiff has demanded a jury.

**13. The number of trial days required.**

The Parties believe that five (5) full court days will be needed to try this case.



1           **14.     The names, addresses, and telephone numbers of all trial counsel.**

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3  
4           1.   Attorneys for Plaintiff

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**15. The dates on which the trial counsel may have complications to be considered in setting a trial date.**

None known at this time.

**16. Whether all defendant(s) have been served.**

Yes.

**17. Whether any party wishes a scheduling conference before the Court enters a scheduling order in the case.**

No.

**18. List the date(s) that each and every nongovernmental corporate party filed its disclosure statement pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1.**

Defendant Ocwen Loan Servicing filed its Rule 7.1 corporate disclosure statement on October 12, 2017. (Dkt # 7). Defendant Equifax Information Services, LLC filed its Rule 7.1 corporate disclosure statement on October 19, 2017. (Dkt # 12)

DATED this 7th day of December, 2017.

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